

ANNEX A

QUOTAS AND MAXIMUM FLIGHT DISTANCES

Annex A, entitled "Quotas and Maximum Flight Distances," consists of three sections that provide data relating to the allocation of passive quotas, the annual distribution of active quotas, and the specification of maximum flight distances from Open Skies airfields for observation flights. Basic rights and obligations with respect to quotas are contained in Article III.

Section I, entitled "Allocation of Passive Quotas," consists of two paragraphs. Paragraph 1 provides the allocation of individual passive quotas for the State Parties that signed the Treaty in Helsinki on March 24, 1992, with the exception of Georgia, which signed the Treaty without directly participating in its negotiation in Vienna. A passive quota for Georgia will have to be agreed subsequently in the Open Skies Consultative Commission.

Paragraph 2 of Section I states that, in the event that an additional State ratifies or accedes to the Treaty, an allocation of a passive quota to such State shall be considered during the regular session of the Open Skies Consultative Commission following the date of deposit of its instrument of ratification or accession.

Section II, entitled "First Distribution of Active Quotas for Observation Flights," consists of four paragraphs.

Paragraph 1 of Section II sets forth the first distribution of active quotas, which is based on the formula that for the initial period of implementation of the Treaty each State Party shall be obligated to accept over its territory a number of observation flights no greater than 75 percent, rounded down to the nearest whole number, of its individual passive quota set forth in Section I. Thus, for example, the United States would only have to accept up to 31 flights annually in this initial period, being 75 percent of its full passive quota of 42. In any case, only 4 of those 31 were allocated -- all to the Belarus/Russian group of States Parties. Conversely, the passive quotas of many other participants were fully allocated. This first distribution is valid from the date of entry into force of the Treaty until December 31 of the next year -- the year after the year during which the Treaty enters into force -- and shall be effective only for those States Parties having ratified the Treaty.

Paragraph 2 of Section II states that, until the date of full implementation of the Treaty specified in Article XVIII, i.e., from January 1 of the fourth year

following the year during which entry into force takes place, annual distributions of active quotas shall be based on the 75 percent rule established in paragraph 1 of this Section.

Paragraph 3 of Section II states that, from the date of full implementation of the Treaty, i.e., from January 1 of the fourth year following the year during which the Treaty enters into force, each State Party shall accept a number of observation flights up to the full amount of its individual passive quota, as set forth in Section I of this Annex. Such an increase will be based, whenever possible or whenever requested, and unless otherwise agreed, on a proportionate increase of the active quotas distributed in the first distribution.

Paragraph 4 of Section II states that, for additional States that ratify or accede to the Treaty, the distribution of active quotas to such State shall be considered during the regular session of the Open Skies Consultative Commission following the date of the deposit of its instrument of ratification or accession. The ratifying or acceding State has the right to request flights over the territories of States Parties within the passive quota allocated to that State and to the States requested for observation flights, unless otherwise agreed by the Parties involved. Further, all States Parties have the right to request observation flights over the territory of the State that has ratified or acceded to the Treaty within their own active quotas and within the passive quota allocated to that State.

Section III, entitled "Maximum Flight Distances of Observation Flights," sets forth the maximum flight distances of observation flights over the territories of observed Parties commencing from each Open Skies airfield specified by the States Parties pursuant to Annex E. The approximate observation flight distance set forth in the notification provided by the observing Party in accordance with paragraph 5 of Section 1 of Article VI, and the mission plan provided in accordance with paragraph 1 of Section II of that Article, may not exceed the relevant maximum flight distance contained in this Section.

ANNEX B
INFORMATION ON SENSORS

Annex B, entitled "Information on Sensors," consists of two Sections and one Appendix.

Section I of Annex B, entitled "Technical Information," specifies the technical information that, pursuant to paragraph 10 of Article IV, is required to be conveyed to all States Parties concerning each sensor installed on the aircraft designated by that State Party pursuant to Article V as an observation aircraft. Such information is provided according to the category of sensor. It should be noted that this is a requirement for the provision of information on sensors, and does not represent or establish limitations or requirements for sensors.

Paragraph 2 stipulates the technical information required for optical panoramic and framing cameras. Paragraph 3 stipulates the technical information required for video cameras. Paragraph 4 stipulates the technical information required for infra-red line-scanning devices. Paragraph 5 stipulates the technical information required for sideways-looking synthetic aperture radars. Paragraph 6 specifies additional technical information required for sensors that record data on photographic film. Paragraph 7 specifies additional technical information required for sensors that record data on other recording media.

Section II of Annex B, entitled "Annotation of Data," consists of four paragraphs.

Paragraph 1 of Section II identifies the information required to be annotated on data collected by sensors during an observation period. Such information must be placed on the leader of each roll of the original film negative or at the beginning of each other recording medium.

Paragraph 2 of Section II identifies the information that must be recorded manually or electronically from the navigation and avionics system of the observation aircraft and annotated on data collected by sensors during an observation period. For all categories of sensors, the intervals at which such information must be provided will be decided by the Open Skies Consultative Commission during the period of provisional application of the Treaty.

Paragraph 3 of Section II requires that, for copies of single frames or strips of imagery produced from the original film negative or other recording media, the information set forth in paragraphs 1 and 2 of this Section be annotated on each positive print.

Paragraph 4 of Section II establishes the right of States Parties conducting observation flights to annotate data collected during such flights using either alphanumeric values or codes agreed by the Open Skies Consultative Commission during the period of provisional application of the Treaty.

Appendix 1 to Annex B, entitled "Annotation of Data Collected During an Observation Flight," contains 16 paragraphs that provide detailed conventions for annotating data. This Appendix contains the alphanumeric characters to represent the reference number of the observation flight (paragraph 1), sensor description (paragraph 2), and sensor configuration (paragraph 3). It also provides rules for specifying the focal length of a lens, the date and time, average height above ground level, latitude and longitude, true heading, roll angle, pitch angle, drift angle, ground speed, swath width, and look down angle. Finally, this Appendix specifies the procedures for numbering film magazines and frames on the original film negative.

ANNEX C

INFORMATION ON OBSERVATION AIRCRAFT

Annex C, entitled "Information on Observation Aircraft," consists of five paragraphs that describe the information that must be provided to all States Parties when a State Party designates aircraft as observation aircraft pursuant to paragraph 2 of Article V. It should be noted that this is a requirement for the provision of information on aircraft and does not represent or establish limitations or requirements for aircraft.

Paragraph 1, entitled "Identification", requires information on the type and model of the aircraft, as well as the number, category, type and configuration of each sensor installed on the observation aircraft. The information on the sensors must be provided as set forth in Annex B.

Paragraph 2, entitled "Mission Planning," requires information on the height above ground level at which each sensor achieves the performance limits set forth in paragraph 2 of Article IV, for each type and configuration of sensor installed on the observation aircraft for which ground resolution is dependent upon that height; for other types and configurations of sensors, the altitude for maximum range must be provided. Additional information that must be provided includes optimum cruising speed at each altitude specified in accordance with this paragraph and the fuel consumption at optimum cruising speed at such altitudes.

Paragraph 3, entitled "Navigation, Communications, and Landing Aids," requires information on each type of navigation equipment installed on the observation aircraft and the positional accuracy of that equipment, and information on radio communications, approach and landing equipment installed on the observation aircraft. Such information shall be provided in accordance with standard practice established by the International Civil Aviation Organization.

Paragraph 4, entitled "Ground Handling," requires information needed to establish the characteristics of airfields that would be capable of handling observation aircraft. This information consists of the physical dimensions of the aircraft, airfield runway length and pavement strength required, types of fuels used and other servicing requirements.

Paragraph 5, entitled "Accommodation Facilities," requires information on the total number of personnel who could be seated on board, including the flight crew, and the number of sleeping berths.

ANNEX D

CERTIFICATION OF OBSERVATION AIRCRAFT AND SENSORS

Annex D, entitled "Certification of Observation Aircraft and Sensors," consists of four Sections and one Appendix that together provide the procedures for conducting the certification of an aircraft designated as an observation aircraft by a State Party pursuant to Article V and the sensors installed on such an aircraft.

Section I, entitled "General Provisions," consists of nine paragraphs.

Paragraph 1 of Section I establishes the right of each State Party to send personnel to participate in the certification process of an observation aircraft of each type and model designated by another State Party and the associated set of sensors installed on such an aircraft. The State Party designating the aircraft is responsible for conducting the certification and is obliged to provide a notification concerning the certification pursuant to paragraph 3 of this Section. Pursuant to paragraph 4 of Article V, only one exemplar of a particular type and model of aircraft with an identical set of sensors must be certified. The aircraft and its sensors are examined both on the ground, as set forth in Section II of this Annex, and in-flight, as set forth in Section III of this Annex.

Paragraph 2 of Section I states the purpose of the certification, which is to establish that: (A) the type and model of the aircraft corresponds to that designated by the State Party conducting the certification; (B) the categories of the sensors installed on the aircraft correspond to the categories specified in paragraph 1 of Article IV and the sensors meet the performance limits specified in paragraph 2 of that Article; (C) the technical information on the sensors has been provided in accordance with Annex B; and (D) the covers for sensor apertures and other inhibiting devices are in their proper position. The certification establishes the minimum height above ground level from which a sensor may be operated to achieve the maximum permitted ground resolution of the sensor.

Paragraph 3 of Section I requires each State Party conducting a certification to provide sixty-day advance notification of the period during which the certification will take place. The certification must take place within a seven-day period. Paragraph 3 also provides the content of the notification, which includes basic information necessary for prospective participants at the certification, including the location of the certification and the aircraft and sensors to be certified.

Paragraph 4 of Section I requires that each State Party intending to participate in the certification notify all other States Parties of its intention, no later than 10 days after receiving the notification from the State Party conducting the certification described supra in paragraph 3.

Paragraph 5 of Section I requires that each State Party intending to participate in the certification notify the State Party conducting the certification no less than 30 days in advance of the beginning date of the certification, as notified in accordance with paragraph 3 of this Section. The following information will be provided in that notification: (A) the names of all the individuals who will be participating in the certification, and, if a non-commercial transport aircraft is to be used to travel to the point of entry, the list of names of the crew members; (B) the date and estimated time of arrival at the point of entry; and (C) the mode of transport to be used to arrive at the point of entry. All individuals taking part in the certification must be on the list of individuals designated pursuant to Article XIII, thus, ensuring that the State Party conducting the certification has had a right to review and approve or reject each individual proposed.

Paragraph 6 of Section I requires that the State Party conducting the certification provide the States Parties that have notified their intention to participate in the certification, no less than 14 days in advance of the beginning of the certification, the following information for each sensor on the aircraft and for the associated equipment used to annotate data collected by the sensors: (A) a description of each constituent part of the sensor, its purpose, and any connections to associated data annotation equipment; (B) photographs taken of each sensor separate from the observation aircraft; and (C) instructions on the in-flight operation of each sensor.

Paragraph 7 of Section I requires the State Party conducting the certification to conduct the in-flight examination on its own if no State Party notifies its intent to take part in the certification. At the conclusion of that examination, a certification report would be completed and provided to other States Parties in accordance with Section IV of this Annex. In such a circumstance, no State Party would have the right to contest the certification.

Paragraph 8 of Section I applies the privileges and immunities accorded to the personnel of the observing Party to the individuals taking part in the certification. Such privileges and immunities apply during the entire period those individuals are present on the territory of the State Party conducting the certification.

Paragraph 9 of Section I requires the personnel of the States Parties taking part in the certification to depart the territory on which the certification was conducted promptly after signing the certification report.

Section II, entitled "Ground Examination," consists of fourteen paragraphs that provide the procedures for the ground examination part of the certification process.

Paragraph 1 of Section II permits, with the approval of the State Party conducting the certification, more than one State Party to conduct ground examinations simultaneously. This paragraph also establishes the right of States Parties to jointly conduct a ground examination. The State Party conducting the certification, however, has the right to determine the number of personnel of the other States Parties engaged at any one time in the ground examination.

Paragraph 2 of Section II sets forth the length of the ground examination as three eight-hour periods for each observation aircraft and its sensors.

Paragraph 3 of Section II requires the State Party conducting the certification to provide the participating States Parties with additional information on the sensors, beyond that required pursuant to paragraph 6 of Section I of this Annex, including flight test data.

Paragraph 4 of Section II requires the State Party conducting the certification to provide a briefing to the personnel of the participating States Parties on (A) how the ground examination will be conducted; (B) the layout of the observation aircraft and the position of the sensors, associated equipment, sensor covers and other inhibiting devices on that aircraft; (C) safety precautions that must be observed during the ground examination; and (D) the inventory procedures that the escorts will use with respect to items brought on board the aircraft during the examinations.

Paragraph 5 of Section II requires that each participating State Party deliver a list of the equipment to be used during the examinations; such list must be provided prior to commencement of the ground examination. Such equipment may include video cameras, hand-held audio recorders, hand-held electronic computers, and other items approved by the State Party conducting the certification.

Paragraph 6 of Section II requires that all the States Parties present for the certification conduct an inventory of the equipment to be used during the examinations and to review the inventory procedures that will be used by the escorts of the State Party conducting

the certification to confirm that each such item has been removed from the aircraft at the conclusion of the examinations.

Paragraph 7 of Section II establishes the right of the personnel of each participating State Party to conduct the following activities during the ground examination: (A) confirm that the number and configuration of each sensor correspond to the information provided in accordance with other provisions of the Treaty; (B) familiarize themselves with the installation of each sensor, including the constituent parts and connections to each other and any associated data annotation equipment; (C) obtain a demonstration of the control and operation of each sensor; and (D) familiarize themselves with the flight test data provided pursuant to paragraph 3 of this Section.

Paragraph 8 of Section II requires the State Party conducting the certification to photograph any sensor on the observation aircraft, the associated equipment or the sensor apertures with their covers or other inhibiting devices, at the request of any participating State Party.

Paragraph 9 of Section II establishes the right of the State Party conducting the certification to designate escorts to accompany the personnel of the participating States Parties to confirm that the provisions of this Section are being complied with. Personnel of the State Party conducting the certification, however, may not interfere with the activities of the participating States Parties, unless such activities conflict with the safety precautions that were specified in the briefing provided prior to the commencement of the ground examination.

Paragraph 10 of Section II requires the State Party conducting the certification to provide the participating States Parties access to the entire aircraft, its sensors and associated equipment; in addition, sufficient power to operate the sensors and associated equipment must be provided, so that the operation of the sensors and equipment can be examined. Only the State Party conducting the certification may open compartments and remove panels or barriers in the aircraft. Such activities must be done to the extent necessary to permit the participating States Parties to examine the sensors and associated equipment. Any question that may arise as to whether these activities were done to the necessary extent will be resolved between the participating States Parties and the State Party conducting the certification or, if resolution cannot be reached, in the Open Skies Consultative Commission.

Paragraph 11 of Section II is intended to protect the aircraft and sensors from adverse effects caused by the examination by requiring that the examination be conducted

in a manner that does not degrade, damage or prevent subsequent operation of the observation aircraft or its sensors; (B) alter the electrical or mechanical structure of the aircraft or its sensors; or (C) impair the airworthiness of the aircraft.

Paragraph 12 of Section II establishes the right of the participating States Parties to take measurements and make notes, sketches, similar records and recordings relating to the aircraft, sensors and associated equipment. Only the equipment listed in paragraph 5 of this Section may be used for this purpose. Such materials may be retained by the Parties compiling them and are not subject to any review or examination by the State Party conducting the certification.

Paragraph 13 of Section II requires the State Party conducting the certification to make every effort to answer questions raised by the participating States Parties that pertain to the ground examination.

Paragraph 14 of Section II requires the participating States Parties to leave the aircraft upon completion of the ground examination. The State Party conducting the certification has the right to use its own inventory procedures, as set forth in paragraph 6 of this Section, to confirm that all the equipment used during the ground examination has been removed from the aircraft.

Section III, entitled "In-Flight Examination," consists of eight paragraphs.

Paragraph 1 of Section III requires the State Party conducting the certification to complete one in-flight examination of its sensors. Such examination must be sufficient to (A) permit observation of the operation of all the sensors; (B) establish the minimum height above ground level from which sensors installed on the aircraft may be operated, as set forth in paragraph 2 of Article IV -- if the ground resolution of the sensor depends upon height above ground level, e.g., optical cameras; and (C) establish the ground resolution of sensors installed on the aircraft for which the ground resolution of the sensor does not depend upon height above ground level, e.g., sideways-looking synthetic aperture radar. The methodologies for determining ground resolution and minimum height above ground level are set forth in Appendix 1 to this Annex.

Paragraph 2 of Section III requires the State Party conducting the certification to brief the participating States Parties on how it plans to conduct the in-flight examination. Such briefing must be held prior to the beginning of the in-flight examination and must include

the following: (A) a diagram of the calibration targets that will be used to determine the minimum height above ground level and ground resolution, as specified in Appendix 1; (B) data concerning each pass over the calibration target; and (C) the safety precautions that must be observed during the in-flight examination.

Paragraph 3 of Section III establishes the right of the participating States Parties to visit the location of the calibration targets. Such right exists both prior to and during the conduct of the in-flight examination. In addition, the State Party conducting the certification must provide the appropriate equipment to permit the participating States Parties to confirm that the calibration targets meet the specifications set forth in Appendix 1.

Paragraph 4 of Section III requires that the in-flight examination be conducted during clear atmospheric daytime conditions, unless otherwise agreed, and that the examination take place over calibration targets appropriate to each category of sensors, as set forth in Appendix 1.

Paragraph 5 of Section III requires the State Party conducting the certification to provide data on meteorological conditions at the location of the calibration targets during the examination that permit the appropriate calculations to be made in accordance with Appendix 1.

Paragraph 6 of Section III establishes the right of each participating State Party to designate individuals to be on board the aircraft during the in-flight examination. In the event the number of such individuals exceeds the passenger capacity of the aircraft, the participating States Parties must agree on which of the individuals will be on board during the examination. If agreement cannot be reached, the matter could be raised within the Open Skies Consultative Commission. There is no requirement that the State Party conducting the certification conduct more than one flight as part of the in-flight examination.

Paragraph 7 of Section III establishes the right of the personnel of the participating States Parties on board the aircraft during the in-flight examination to observe the operation of the sensors by personnel from the State Party conducting the certification.

Paragraph 8 of Section III establishes the right of the participating States Parties to monitor the unsealing of the film cassette and the storage, processing and handling of the original film negative exposed during the in-flight examination, in accordance with the procedures set forth in Annex K.

Section IV, entitled "Certification Report," consists of five paragraphs.

Paragraph 1 of Section IV requires that all data collected by the sensors and all data collected from the calibration targets be examined jointly by the State Party conducting the certification and all the participating States Parties. Such examination will take place upon completion of the ground and in-flight examinations. After examining the data, those Parties will prepare a certification report, which will establish: (A) that the aircraft is of a type and model designated pursuant to Article V; (B) that the sensors installed on the aircraft correspond to the categories of sensors set forth in paragraph 1 of Article IV, and that they satisfy the performance limits set forth in paragraph 2 of Article IV; (C) that the technical information on sensors has been provided, as required by Annex B; (D) the minimum height above ground level that a sensor may be operated -- if the ground resolution of the sensor is dependent upon height above ground level; (E) the ground resolution of the sensor -- if the ground resolution of the sensor is not dependent upon height above ground level; and (F) that the covers for sensor apertures and other inhibiting devices are in accordance with the requirements set forth in paragraph 4 of Article IV, i.e., that such covers or devices are present, that they prevent collection of data, and that they are removable or operable only from outside the observation aircraft.

Paragraph 2 of Section IV requires that a copy of the information provided pursuant to this Annex for each sensor be attached to the certification report. Such information includes, inter alia, a description of each constituent part of the sensor, instructions on the in-flight operation of the sensor, flight test data, and photographs.

Paragraph 3 of Section IV requires that copies of the report be provided to all other States Parties. Such recipients, however, who did not take part in the certification, do not have the right to reject the conclusions contained in the certification report.

Paragraph 4 of Section IV states that the aircraft and its sensors are deemed to be certified unless the participating States Parties are unable to reach agreement with the Party conducting the certification on the contents of the report.

Paragraph 5 of Section IV states that if there is no agreement on the contents of the certification report, the observation aircraft may not be used for observation flights until the issue is resolved.

Appendix 1 to Annex D, entitled "Methodologies for the Verification of the Performance of Sensors Installed on an Observation Aircraft," consists of three sections

that provide procedures for the determination of the ground resolution and minimum height above ground level for sensors during the in-flight examination conducted pursuant to Section III of Annex D. Such determination is to be made on the basis of data collected over calibration targets and is to be calculated in accordance with methodologies that are to be agreed within the Open Skies Consultative Commission.

Section I of Appendix 1, entitled "Specifications for Calibration Targets," consists of five paragraphs, which describe the calibration targets to be used during the in-flight examination.

Paragraph 1 of Section I requires that calibration targets be provided by the State Party conducting the certification. The purpose of such targets is to establish the ground resolution of sensors. The calibration targets must be of a type appropriate to each sensor category, and shall be designed in accordance with paragraphs 2 through 5 of this Section.

Paragraph 2 of Section I describes calibration targets for establishing the ground resolution of optical cameras. Paragraph 3 of Section I states that calibration targets for establishing the ground resolution of infra-red line-scanning devices are to be determined within the Open Skies Consultative Commission during the period of provisional application of the Treaty. Paragraph 4 of Section I describes the type of targets to be used to establish the ground resolution of sideways looking synthetic aperture radar, but leaves the configuration to be subsequently determined, based on the methodologies agreed within the Open Skies Consultative Commission during the period of provisional application of the Treaty.

Paragraph 5 of Section I requires that each State Party conducting a certification provide the other States Parties with a diagram of the calibration targets that it intends to use during the in-flight examination. The diagram must be annotated with specified information, some of which is referred to in this paragraph and some of which are to be decided within the Open Skies Consultative Commission during the period of provisional application of the Treaty.

Section II of Appendix 1, entitled "Conduct of In-Flight Examination," consists of three paragraphs that describe the line of flight of the observation aircraft during the flight over the calibration targets for each type of sensor. Paragraph 1 describes the line of flight for optical cameras, paragraph 2 describes the line of flight for infra-red line-scanning devices, and paragraph 3 describes the line of flight for sideways-looking synthetic aperture radar.

Section III of Appendix 1, entitled "Analysis of Data Collected During the In-Flight Examination," consists of five paragraphs that describe the process of analyzing the data collected over the calibration targets, the results of which are provided in the certification report in accordance with Section IV of Annex D.

Paragraph 1 of Section III requires the State Party conducting the certification and the participating States Parties to jointly analyze the data collected during the in-flight examination.

Paragraph 2 of Section III states that the methodology for calculating the minimum height above ground level at which each optical camera may be operated must be agreed by the Open Skies Consultative Commission during the period of provisional application of the Treaty but prior to June 30, 1992. The analysis of that agreement is provided infra. The minimum height above ground level is the height at which the camera would obtain imagery equal to but not better than the agreed standard ground resolution of 30 centimeters. Specification of the contrast ratio, i.e., the numerical representation of the difference between the black and white lines in the test target, is necessary because the results achieved in terms of ground resolution are directly affected by the degree of contrast in the target. The ground resolution of the optical cameras will be determined from a visual analysis of the image of the target on the film negative, and the value of the ground resolution is equal to the width of the smallest bar on the calibration target that is distinguishable as a separate bar.

Paragraph 3 of Section III states that the methodology for calculating the minimum height above ground level at which each video camera may be operated will be determined by the Open Skies Consultative Commission during the period of provisional application of the Treaty.

Paragraph 4 of Section III states that the methodology for calculating the minimum height above ground level at which an infra-red line-scanning device may be operated, including the value of the minimum resolvable temperature difference to be used in this calculation, shall be agreed by the Open Skies Consultative Commission during the period of provisional application of the Treaty.

Paragraph 5 of Section III states that the methodology for calculating the ground resolution of a sideways-looking synthetic aperture radar, including the determination of the relationship between the "impulse response" method, which is used by, inter alia, the United States and the United Kingdom, and the "object separation" method, which is used by Russia, will be agreed by the Open Skies Consultative Commission during the period of provisional application of the Treaty.

ANNEX E

PROCEDURES FOR ARRIVALS AND DEPARTURES

Annex E, entitled "Procedures for Arrivals and Departures," consists of ten paragraphs that contain provisions on establishing points of entry, points of exit, Open Skies airfields, entry fixes, exit fixes and calibration targets, as well as procedures for activities that take place upon arrival and upon departure. This annex also contains an appendix that provides data for each of the States Parties with respect to those sites. Not all information was available from all Parties at the time of signature of the Treaty. Remaining information will be submitted by the Parties through the Open Skies Consultative Commission.

Paragraph 1 requires each State Party to designate at least one point of entry, one point of exit, and one Open Skies airfield on its territory. Initial data are set forth in Appendix 1 to this Annex. Any or all of the points of entry, and any or all of the points of exit, may also be designated as Open Skies airfields, which, according to paragraph 27 of Article II, is the point where an observation flight may commence or terminate. If, however, the Open Skies airfield is not the same as the point of entry, the Open Skies airfield must be within five hours of the point of entry, using the observing Party's observation aircraft or the observed party's transportation, unless the Parties agree otherwise. Paragraph 1 also establishes the right of the observing Party to a rest period upon arrival at the point of entry or Open Skies airfield, subject to the time restrictions contained in Article VI, i.e., paragraph 9 of Section I, which sets a 96-hour period for completion of the observation flight, unless otherwise agreed.

Paragraph 2 establishes the right of each State Party to designate entry fixes and exit fixes, which correspond to the ICAO term "transfer of control point," i.e., a defined point located along the flight path of an aircraft, at which the responsibility for providing air traffic control service to the aircraft is transferred from one control unit or control position to the next (ICAO Document 4444-RAC/501/12, 1-14). With respect to the term "entry fix," it is the point at which the aircraft enters the air traffic control area of the observed Party; for the term "exit fix," it is the point at which the aircraft exits the air traffic control area of the observed Party.

Paragraph 2 of Annex E states that, if a Party decides to designate such fixes, such fixes must facilitate flight from the territory of the observing Party to the point of entry of the observed Party. The intention was to preclude Parties designating entry fixes that would require unusually circuitous or difficult routing, which would frustrate the objectives of

the Open Skies regime. The flights between the entry fix and the point of entry, and between the point of exit and the exit fix, must be conducted in accordance with published ICAO standards and recommended practices and national regulations; in other words, there are no special procedures required by the Open Skies treaty. If portions of such flights lie in international airspace, the flight through international airspace must be conducted in accordance with published international regulations.

Paragraph 3 states that the initial information on points of entry, points of exit, Open Skies airfields, entry fixes and exit fixes, refuelling airfields, and calibration targets is provided in Appendix 1.

Paragraph 4 establishes the right of a State Party to introduce changes to Appendix 1 by notifying all other States Parties of such changes, in writing, no less than 90 days before such changes become effective. Since Section II of Appendix 1, which contains the initial data, did not include data for all categories of data as of the date of signature of the Treaty, such changes are likely to be numerous at the beginning of Treaty implementation, after entry into force of the Treaty.

Paragraph 5 provides the rules that ensure that, despite the geographic peculiarities of the territory of a given State Party, particularly as pertains to island territory, the entire territory of that State Party will be effectively observed. The rule that ensures effective observation of the mainland territory of a State Party, which is contained in subparagraph (A), is that Open Skies airfields must be designated so that no point on the territory of that State Party is farther from at least one of its Open Skies airfields than 35 percent of the maximum flight distance established for that airfield in Section III of Annex A. The figure of 35 percent was intended to allow for a flight out to that point (35 percent), a flight back from that point to the same airfield (35 percent), and sufficient maneuvering distance (30 percent) for observation activities.

There are three rules set forth in subparagraph (B) that ensure effective observation of portions of the territory of a State Party that are separated from the mainland territory, e.g., islands. One of these rules must be chosen by the State Party to cover its particular situation. The States Parties primarily affected by this provision are the United States, Denmark, France, Norway, and the United Kingdom.

(1) The first rule, set forth in subparagraph (B)(1), is that the State Party may decide to designate an Open Skies airfield that can reach the island pursuant to the 35 percent principle elaborated in subparagraph (A) of this paragraph.

(2) The second rule, set forth in subparagraph (B)(2), is that a State Party may provide special procedures, including the use of refuelling airfields, but the choice of this rule is permitted only in the following cases: (A) if the portion or portions of the territory are separated from the mainland territory by more than 600 kilometers; (B) if the observing Party and the State party choosing this option agree that this rule may be applied for the former's observation flights over the latter's territory; or (C) if this situation is covered in Section III of Annex A.

(3) The third rule, set forth in subparagraph (B)(3), is that the State Party may specify a separate maximum flight distance in Section III of Annex A to cover this portion or portions of its territory, but this rule is permitted only if the portion or portions of the territory are separated from the mainland territory by less than 600 kilometers and that portion or portions of the territory are not covered by the 35 percent rule established for Open Skies airfields, as set forth in subparagraph (A) of this paragraph.

Paragraph 6 requires that both the observed and observing Parties inspect the covers for sensor apertures and other devices that inhibit the operation of sensors immediately upon the arrival of the observation aircraft at the point of entry and immediately prior to the departure of the observation aircraft from the point of exit. Such covers and other inhibiting devices are installed in accordance with paragraph 4 of Article IV. If the point of entry is different from the Open Skies airfield from which the observation flight commences, both Parties must inspect the covers and other inhibiting devices immediately prior to the departure of the observation aircraft from the point of entry en route to the Open Skies airfield. If the point of exit is different from the Open Skies airfield at which the flight terminates, both Parties must inspect the covers and other inhibiting devices immediately prior to departure of the aircraft from that airfield en route to the point of exit.

Paragraph 7 establishes the right of a State Party to conduct an examination and inventory of items of equipment that the other State Party intends to use for the purposes of conducting the pre-flight inspection of sensors and aircraft, as provided for in Annex F, as well as the items that the flight representatives intend to bring on board the observation aircraft. With respect to aircraft provided by the observing Party, the observing Party conducts the examination and inventory of equipment; with respect to aircraft provided by the observed Party, the observed Party conducts that examination and inventory. This examination and inventory must begin no later than one hour after arrival of the items at the point of entry or the Open Skies airfield, at the choice of the State Party conducting the examination

and inventory. The examination and inventory must be completed within one hour and must be carried out in the presence of one or more individuals designated by the other Party.

Paragraph 8 provides the procedures for items that, pursuant to paragraph 7, were examined and inventoried but were found not to conform to the list of authorized equipment contained in paragraph 5 of Section II of Annex D or, for items that the flight representatives intend to bring on board the observation aircraft, the items described in paragraph 4 of Section I of Annex G. The examining Party has the right to deny permission for the use of all items that do not conform to those on the lists and, unless the Parties otherwise agree, such items must be placed in a sealed container for safekeeping and subsequently removed from the territory of the observed Party at the earliest opportunity, but not later than the departure of the observing Party from the territory.

Paragraph 9 provides procedures to be used when the observing Party travels to the point of entry using a transport aircraft registered with the observing Party or with another State Party. This situation would normally occur when the observation aircraft is provided by the observed Party. In such a situation, the transport aircraft may (1) depart from the territory of the observed Party; (2) if the point of entry and the point of exit are the same, remain at the point of entry until the observing Party departs from the territory of the observed Party; or (3) if the point of entry is not the same as the point of exit, fly to the point of exit in sufficient time to permit the crew to rest prior to departure of all the personnel of the observing Party from the territory of the observed Party. As noted in paragraph 10 *infra*, there is a fourth option for the transport aircraft: for the observing Party to use the transport aircraft for transporting its personnel from the point of entry to the Open Skies airfield. After carrying out that task, one of the three options in paragraph 9 would apply for the further disposition of that aircraft.

Paragraph 10 provides procedures to be used when the observation aircraft is provided by the observed Party and the observing Party does not use its own transport aircraft for transporting its personnel from the point of entry to the Open Skies airfield. In such a situation, the observed Party must ensure that the personnel of the observing Party are transported from the point of entry to the Open Skies airfield and from the Open Skies airfield to the point of exit. As provided in paragraph 1 of this Annex, the Open Skies airfield cannot be farther than five hours away from the point of entry.

Appendix 1 of Annex E consists of two sections, the first entitled "Designation of Sites", the second entitled "Points of Entry, Points of Exit, Open Skies Airfields, Entry Fixes, Exit Fixes, Refuelling Airfields, and Calibration Targets."

Section I of Appendix 1 states that the sites to be used as points of entry, points of exit, Open Skies airfields, refuelling airfields, calibration targets, entry fixes and exit fixes are initially as specified in Section II of the Appendix. As provided for in paragraph 4 of Annex E, changes can be made to these lists upon 90-day advance notification. In addition to the name of each such site, the designation in Section II includes its location, in terms of latitude and longitude to the nearest second, and whether or not the pre-flight inspection of the aircraft or sensors can be conducted at that site pursuant to Annex F.

Section II of Appendix 1 sets forth the data for each of the States Parties concerning each of the designated sites. The States Parties appear in order according to the French version of their names, the same order in which that they appear in on the signature page. For many of the States Parties, no entry fixes or exit fixes are provided; in accordance with paragraph 2 of Annex E, the designation of such fixes is not required. In addition, a number of the State Parties have not yet provided the location of calibration targets, in part due to the fact that some of the specifications of calibration targets are still subject to determination within the Open Skies Consultative Commission. There are is no data on Georgia in Section II, since that State Party did not participate in the negotiations in Vienna.

ANNEX F

PRE-FLIGHT INSPECTIONS AND DEMONSTRATION FLIGHTS

Annex F, entitled "Pre-Flight Inspections and Demonstration Flights," consists of three sections that provide procedures for the pre-flight inspection of an observation aircraft provided by the observing Party and its sensors, for the pre-flight inspection of the sensors installed on an observation aircraft provided by the observed Party, and for demonstration flights.

Section I, entitled "Pre-Flight Inspection of Observation Aircraft and Sensors of the Observing Party," consists of 11 paragraphs that describe the pre-flight inspection of an observation aircraft provided by the observing Party and its sensors and provide specific procedures for the conduct of such an inspection.

Paragraph 1 of Section I establishes the purpose of the pre-flight inspection of the aircraft and its sensors, which is to confirm that the aircraft, its sensors and the associated equipment correspond to those certified in accordance with the provisions of Annex D. To fulfill this purpose, the observed Party has the right to conduct a pre-flight inspection to confirm that: (A) the aircraft, its sensors and associated equipment, including lens and photographic film, correspond to those certified in accordance with Annex D; and (B) there are no items of equipment on board the aircraft other than those permitted by paragraphs 5, 6, and 7 of Article IV, which permit equipment capable of annotating data collected by sensors and equipment capable of displaying data collected by sensors in real-time, as well as other equipment required for the operation of the agreed sensors or of the observation aircraft.

Paragraph 2 of Section I requires the observed Party, upon arrival of the observation aircraft at the point of entry, to provide the observing Party: (A) a list of the inspectors, not to exceed ten; (B) a list of the items of equipment that the inspectors intend to use during the inspection; and (C) the plan for the inspection.

Paragraph 3 of Section I requires a designated individual from the observing Party, prior to the commencement of the pre-flight inspection, to: (A) brief the observed Party on the inventory procedures it intends to use to confirm that all items brought on board by the inspectors have been removed at the end of the inspection; (B) conduct an examination and inventory of each such item, together with the inspectors; and (C) brief the inspectors on all safety precautions that they must observe during the inspection.

Paragraph 4 of Section I permits the inspection to begin only upon completion of the formal arrival procedures and limits the inspection to eight hours.

Paragraph 5 of Section I establishes the right of the observing Party to provide its own escorts to accompany the inspectors throughout the inspection to confirm that it is carried out in accordance with the Treaty. In this regard, the observing Party must facilitate the inspection in accordance with procedures established for the certification -- contained in paragraphs 7 and 8 of Section II of Annex D -- which include permitting the inspectors to confirm the number and configuration of each sensor, familiarize themselves with the installation of each sensor, obtain a demonstration of the control and operation of each sensor, familiarize themselves with flight test data, and have pictures taken of sensors, associated equipment, apertures or inhibiting devices.

Paragraph 6 of Section I establishes the inspectors' right of access to the observation aircraft, its sensors and associated equipment in the same manner established for the certification, which provides for access to the entire aircraft and opening compartments or removing panels or barriers to the extent necessary to permit examination of any sensor and associated equipment. In so doing, however, the inspectors must comply with the same constraints imposed for the certification, as provided for in paragraph 11 of Section II of Annex D, such as not conducting the inspection in a manner that degrades, damages, or prevents subsequent operation of the aircraft or its sensors, alters the electrical or mechanical structure of the aircraft or sensors, or impair the airworthiness of the observation aircraft. During the examination, the inspectors have the right to take measurements, make notes, sketches, similar records and recordings, which they may retain, as provided for in paragraph 12 of Section II of Annex D.

Paragraph 7 of Section I permits the inspectors to take on board and use the following non-destructive testing equipment: video probe, x-ray and backscatter x-ray imaging equipment, ultrasonic imaging equipment, logic/data analyzer, passive infra-red sensors, and 35 millimeter camera. This paragraph also notes that additional non-destructive testing equipment may be agreed upon by the Open Skies Consultative Commission prior to June 30, 1992, and that such equipment may be used by the inspectors to establish that no items of equipment are on board the observation aircraft other than those permitted by Article IV, as provided for in subparagraph 1(B) of this Section. One additional piece of equipment, a volt-ohm meter, was agreed to in the Open Skies Consultative Commission on June 29, 1992.

Paragraph 8 of Section I requires the inspectors to leave the observation aircraft after the pre-flight inspection has been completed. The observing Party may then use its own inventory procedures to confirm that all equipment used during the inspection has been removed from the aircraft; pursuant to subparagraph 3(A) of this Section, these procedures

must have been explained to the observed Party prior to the beginning of the inspection. If, in the course of the conduct of the inventory procedures, the observed Party is unable to demonstrate that all inspection equipment has been removed to the satisfaction of the observing Party, i.e., that all the inspection equipment brought on board the aircraft was removed from the aircraft, the observing Party has the right to proceed with the observation flight or to cancel it. In the latter case, the observing Party may depart the territory of the observed Party when the former is satisfied that it is safe to do so. In accordance with paragraph 6 of Section I of Article VIII, the facts for the cancellation must be stated in the mission plan, and within seven days all States Parties must be provided, through diplomatic channels or other official channels, a written explanation for this prohibition in the mission report. If the observing Party decides to cancel the flight, the observation flight will not count toward the active quota of the observing Party or the passive quota of the observed Party.

Paragraph 9 of Section I requires the inspectors to immediately inform the observing Party if they establish that the aircraft, its sensors or associated equipment do not correspond to those certified in accordance with the provisions of Annex D, or if the inspectors find that there are items on board the aircraft other than those permitted by Article IV, as provided for in paragraph 1 of this Section. If the observing Party is unable to demonstrate that the aircraft, its sensors and associated equipment correspond to those certified and that there is no equipment on board other than that permitted, the observed Party has the right to prohibit the observation flight pursuant to paragraph 1 of Section I of Article VIII. The two Parties may also agree that the flight should be conducted despite these circumstances. In accordance with paragraph 3 of Section I of Article VIII, the facts for the prohibition must be stated in the mission plan, and within seven days all States Parties must be provided, through diplomatic channels, a written explanation for this prohibition in the mission report. If the observed Party prohibits the flight, the aircraft must promptly depart from the territory of the observed Party. In this event, the observation flight will not count toward the active quota of the observing Party or the passive quota of the observed Party.

Paragraph 10 of Section I requires the observed and observing Parties to prepare a pre-flight inspection report upon completion of the pre-flight inspection of the aircraft and its sensors. This report will state that the aircraft, its sensors and associated equipment correspond to those certified in accordance with Annex D and that there is no equipment on board the aircraft other than that permitted by Article IV. Such a report would not be required if, in accordance with paragraph 8 or 9 of this Section, the observing Party decided to cancel the flight or if the observed Party

decided to prohibit the flight. In both cases, however, the circumstances must be explained in the mission plan and in the mission report.

Paragraph 11 of Section I establishes that signature of the pre-flight inspection report by the observed Party signifies its agreement for the observing Party to use that aircraft to conduct the observation flight.

Section II, entitled "Pre-Flight Inspection of Sensors of the Observed Party," consists of ten paragraphs that describe the pre-flight inspection of sensors installed on an aircraft provided by the observed Party and sets forth specific procedures for the conduct of such an inspection.

Paragraph 1 of Section II establishes the purpose of the pre-flight inspection of the sensors, which is to confirm that the sensors and the associated equipment correspond to those certified in accordance with the provisions of Annex D. To fulfill this purpose, the observing Party has the right to conduct a pre-flight inspection.

Paragraph 2 of Section II requires the observing Party, upon arrival of the inspectors at the location of the pre-flight inspection -- which was notified in accordance with paragraph 5 of Section I of Article VI and confirmed by the observed Party in accordance with paragraph 6 of that Section -- to provide to the observed Party: (A) a list of the inspectors, not to exceed five; (B) a list of the items of equipment that they intend to use during the inspection; and (C) the plan for the inspection.

Paragraph 3 of Section II requires a designated individual from the observed Party, prior to the commencement of the pre-flight inspection, to: (A) brief the observing Party on the inventory procedures it intends to use to confirm that all items brought on board by the inspectors have been removed at the end of the inspection; (B) conduct an examination and inventory of each such item, together with the inspectors; and (C) brief the inspectors on all safety precautions that they must observe during the inspection.

Paragraph 4 of Section II permits the inspection to begin only upon completion of the formal arrival procedures and limits the inspection to eight hours.

Paragraph 5 of Section II establishes the right of the observed Party to provide its own escorts to accompany the inspectors throughout the inspection to confirm that the inspection is conducted in accordance with the Treaty. In this regard, the observed Party must facilitate the inspection in accordance with procedures established for the certification -- contained in paragraph 7 of Section II of Annex D -- which include permitting the inspectors to confirm the number and

configuration of each sensor, familiarize themselves with the installation of each sensor, obtain a demonstration of the control and operation of each sensor, and familiarize themselves with flight test data.

Paragraph 6 of Section II establishes the inspectors' right of access to the sensors and associated equipment in the same manner established for the certification, which provides for access to the entire aircraft and opening compartments or removing panels or barriers to the extent necessary to permit examination of any sensor and associated equipment. In so doing, however, the inspectors must comply with the same constraints as required for the certification, as provided for in paragraph 11 of Section II of Annex D, such as not conducting the inspection in a manner that degrades, damages, or prevents subsequent operation of the aircraft or its sensors, alters the electrical or mechanical structure of the aircraft or sensors, or impair the airworthiness of the observation aircraft. During the examination, the inspectors have the right to take measurements, make notes, sketches, similar records and recordings, which they may retain, as provided for in paragraph 12 of Section II of Annex D.

Paragraph 7 of Section II requires the inspectors to leave the observation aircraft after the pre-flight inspection has been completed. The observed Party may then use its own inventory procedures to confirm that all equipment used during the inspection has been removed from the aircraft; pursuant to subparagraph 3(A) of this Section, these procedures must have been explained to the observing Party prior to the beginning of the inspection. If, in the course of the conduct of the inventory procedures, the observing Party is unable to demonstrate that all inspection equipment has been removed to the satisfaction of the observed Party, i.e., that all the inspection equipment brought on board the aircraft was removed from the aircraft, the observed Party has the right to prohibit the observation flight in accordance with paragraph 1 of Section I of Article VIII. In accordance with paragraph 3 of Section I of Article VIII, the facts for the prohibition must be stated in the mission plan, and within seven days all States Parties must be provided, through diplomatic channels, a written explanation for this prohibition in the mission report. If the observed Party decides to prohibit the flight, the observation flight will not count toward the active quota of the observing Party or the passive quota of the observed Party.

Paragraph 8 of Section II requires the inspectors to immediately inform the observed Party if they establish that any of the sensors or associated equipment on board the aircraft do not correspond to those certified in accordance with the provisions of Annex D. If the observed Party is unable to demonstrate that the sensors and associated equipment correspond to those certified, the observing Party has the

right to: (A) agree to use an alternative package of sensor types or capabilities proposed by the observed Party; (B) conduct the observation flight according to the original mission plan; (C) accept a delay in the commencement of the observation flight to permit the observed Party to rectify the problem; or (D) cancel the observation flight, and immediately depart the territory of the observed Party. With respect to delaying the commencement of the flight, there are two outcomes: (A) if the problem is resolved, the flight will be conducted according to the mission plan, revised as necessary; or (B) if the problem is not resolved, the observing Party will depart the territory of the observed Party without conducting the flight. In accordance with paragraph 6 of Section I of Article VIII, the facts for the prohibition must be stated in the mission plan, and within seven days all States Parties must be provided, through diplomatic channels, a written explanation for this prohibition in the mission report.

Paragraph 9 of Section II states that, if the observing Party leaves the territory of the observed Party without conducting the observation flight, as the observing Party has the right to do after cancelling the flight in accordance with subparagraphs 8(C) and 8(D) of this Section, the flight will not count toward the active quota of the observing Party or the passive quota of the observed Party.

Paragraph 10 of Section II requires the observed and observing Parties to prepare a pre-flight inspection report upon completion of the pre-flight inspection of the sensors and associated equipment installed on the observation aircraft. This report will state that the sensors correspond to those certified in accordance with Annex D. Such a report would not be required if, in accordance with paragraph 8 of this Section, the observing Party decided to cancel the flight or if, in accordance with paragraph 7 of this Section, the observed Party decides to prohibit the flight. In both cases, however, the circumstances must be explained in the mission plan and in the mission report. This paragraph also establishes that signature of the pre-flight inspection report by the observing Party signifies its agreement to use that aircraft to conduct the observation flight.

Section III, entitled "Demonstration Flights," consists of eight paragraphs that contain the procedures for conducting demonstration flights.

Paragraph 1 of Section III establishes the right of the observed Party to request the observing Party to conduct a demonstration flight on an observation aircraft that the latter provides. Such a flight must be conducted after the pre-flight inspection and must permit the inspectors to observe the functioning of the sensors to be used during the observation flight. Sufficient data must be collected during the flight to allow the inspectors to confirm that

the capabilities of the sensors are in accordance with paragraph 8 of Article IV of the Treaty, which states that, when the observation aircraft is provided by the observing Party, the aircraft may be equipped with sensors in each sensor category that do not exceed the capability specified in paragraph 2 of Article IV.

Paragraph 2 of Section III establishes the right of the observing Party to request the observed Party to conduct a demonstration flight on an observation aircraft that the latter has provided. Such a flight must be conducted after the pre-flight inspection and it must permit the inspectors to observe the functioning of the sensors to be used during the observation flight. Sufficient data must be collected during the flight to allow the inspectors to confirm that the capabilities of the sensors are in accordance with paragraph 9 of Article IV of the Treaty, which states that, when the observation aircraft is provided by the observed Party, the aircraft must be equipped with sensors from each sensor category at the maximum capability specified in paragraph 2 of Article IV.

Paragraph 3 of Section III sets forth the basic obligations and conditions for the conduct of the demonstration flight: (A) the demonstration flight must be performed in accordance with the procedures for the in-flight examination conducted during the certification of an observation aircraft, as provided for in Section III of Annex D; (B) the demonstration flight may not last longer than two hours; (C) the observed Party must provide calibration targets -- in accordance with the specifications for such targets contained in Appendix 1 to Annex D -- in the vicinity of the airfield at which the pre-flight inspection is to be conducted; (D) delays caused by weather or problems with the aircraft provided by the observed Party or its sensors will not count against the allotted time for the demonstration flight, unless otherwise agreed; (E) the observed Party must process the data collected by the sensors at a facility in the vicinity of the airfield at which the pre-flight inspection is to be conducted -- in the presence of personnel from the observing Party and in accordance with Sections II and III of Article IX; and (F) the cost of the demonstration flight, including the provision of data recording media and the processing of data, as distributed in the manner determined by the Open Skies Consultative Commission in Decision Number One (dealing with the distribution of costs arising under the Treaty).

Paragraph 4 of Section III establishes the right of the observing Party to add an extra 24 hours to the 96 hours allowed for the observation flight if the observed Party requests a demonstration flight. Such an extension, however, will not affect the right of other States Parties to conduct observation flights within that 24-hour period. This is an exception to the general rule, as set forth in paragraph 3 of Section I of Article VI, that no State Party is obliged

to accept more than one observation flight at any one time during the 96-hour period. Since it is the observed Party's choice to request the demonstration flight, the observed Party cannot, in exercising that right, foreclose the rights of other States Parties to conduct observation flights that had been notified as beginning within that 24 hours. In addition, paragraph 9 of Section I of Article VI requires the observed Party to extend the 96-hour period pursuant to paragraph 4 of Section III of Annex F if additional time is required by the observing Party for the unrestricted execution of the mission plan.

Paragraph 5 of Section III requires the observing Party to accomplish the demonstration flight, if it requests such a flight on the aircraft provided by the observed Party, within the 96-hour period established pursuant to Article VI, Section I, paragraph 9. That paragraph, however, by using the words "unless otherwise agreed," permits the Parties to agree on the duration of that period, which could allow for an extension even under these circumstances.

Paragraph 6 of Section III provides the remedies for the observed Party if it is not satisfied that the capability of any sensor installed on the observation aircraft provided by the observing Party is in accordance with the provisions contained in Article IV, paragraph 8: (A) if the ground resolution of the sensor is dependent upon height above ground level, the observed Party may propose an alternative minimum height above ground level at which that sensor may operate; (B) if the ground resolution of the sensor is not dependent upon height above ground level, the observed Party may prohibit the operation of that sensor during the observation flight; or (C) the observed Party may prohibit the observation flight pursuant to Article VIII. In each case, an explanation would have to be provided in the mission plan.

Paragraph 7 of Section III provides the remedies for the observing Party if it is not satisfied that the capability of any sensor installed on the observation aircraft provided by the observed Party is in accordance with the provisions contained in Article IV, paragraph 9: (A) the observing Party may agree to use an alternative package of sensor types or capabilities, as proposed by the observed Party; (B) if the ground resolution of the sensor is dependent upon height above ground level, the observing Party may propose an alternative minimum height above ground level at which that sensor may operate; (B) if the ground resolution of the sensor is not dependent upon height above ground level, the observing Party may conduct the observation flight as planned, and the cost of the data recording media would be borne by the observed Party; (D) the observing Party may accept a delay in beginning the flight to permit the observed Party to rectify the problem -- if that problem is rectified, the flight will proceed according to the flight plan, as revised if necessary; if that

problem is not rectified, the observing Party would cancel the flight and depart the territory of the observed Party; and (F) the observing Party may cancel the flight pursuant to Article VIII and immediately depart the observed Party's territory.

Paragraph 8 of Section III states that if the observation flight is prohibited or cancelled, as set forth in paragraphs 6 and 7 of this Section, no observation flight will be counted against the active quota of the observing Party or the passive quota of the observed Party. In addition, the State Party requesting the demonstration flight must convey the matter to the Open Skies Consultative Commission. In any event, the circumstances of any cancellation or prohibition have to be noted in the mission plan and, subsequently, in the mission report, which is provided to all States Parties in accordance with paragraph 21 of Section I of Article VI.

ANNEX G

FLIGHT MONITORS, FLIGHT REPRESENTATIVES
AND REPRESENTATIVES

Annex G, entitled "Flight Monitors, Flight Representatives, and Representatives," consists of two sections that set forth the rights of flight monitors, flight representatives and representatives with respect to their participation in the conduct of observation flights. Flight monitors, as defined in paragraph 18 of Article II, are individuals who perform duties on behalf of the observed Party and who are on board an aircraft provided by the observing Party. Flight representatives, as defined in paragraph 19 of Article II, are individuals who perform duties on behalf of the observing Party and who are on board an aircraft provided by the observed Party.

Representatives, as defined in paragraph 20 of Article II, are individuals who perform duties on behalf of the observing Party, who have been designated by the observing Party in accordance with Article XIII, and who are on board an aircraft designated by a State Party other than the observing Party or the observed Party. This third category of personnel was created specifically to deal with the situation in which an observing Party might arrange with a third Party for the provision of an aircraft and at least part of the crew, including the pilot-in-command. In this circumstance, some States Parties were concerned to emphasize the role and authority of the personnel of the observing Party, designated "representatives."

Section I, entitled "Flight Monitors and Flight Representatives," consists of eight paragraphs that set forth the rights of flight monitors and flight representatives.

Paragraph 1 of Section I establishes that this Annex applies to personnel who have been designated in accordance with Article XIII; pursuant to paragraph 2 of Section I of Article XIII, individuals serving as flight monitors, flight representatives, and representatives are deemed to be accepted by the other Party unless they have been rejected. Paragraph 1 also establishes the right of each State Party to have at any one time on board the aircraft the number of flight monitors and flight representatives as set forth in Section III of Article VI, which also governs the activities of such personnel with respect to the organization and conduct of observation flights. Finally, paragraph 1 requires each State Party to facilitate the activities of flight monitors and flight representatives pursuant to this Annex.

Paragraph 2 of Section I requires the observed Party to appoint one of the flight monitors as chief flight monitor, who must be a national of the observed Party. The observing Party must appoint one of the flight representatives as chief flight representative, who must be a national of the observing Party.

Paragraph 3 of Section I establishes the right of the flight monitors and flight representatives, in preparing for the observation flight, to: (A) acquaint themselves with the technical literature relating to the functioning and operation of the sensors and the flight operation manual of the observation aircraft; and (B) acquaint themselves with the equipment of the observation aircraft relating to the control of the flight regime and the functioning and operation of the sensors installed on the observation aircraft.

With respect to permitting the flight monitors and flight representatives to have access to technical literature relating to the functioning and operation of the sensors, instructions on the in-flight operation of each sensor must be provided to each State Party taking part in the certification pursuant to subparagraph 6(C) of Section I of Annex D, and technical information on each sensor installed on an observation aircraft must be provided to all States Parties pursuant to paragraph 10 of Article IV. Such information would form the basis of the technical literature available to the flight monitors and flight representatives. In addition, pursuant to Article V and paragraph 3 of Annex C, information on navigation, communications and landing aids must be provided to all State Parties when an aircraft is designated as an observation aircraft.

Paragraph 4 of Section I establishes the right of flight monitors and flight representatives to: (A) remain on board the observation aircraft throughout the observation flight, including any stops for refuelling and emergencies; (B) bring on board the observation aircraft and use maps, flight charts, publications, and operations manuals; (C) move unencumbered about the aircraft, including the flight deck, during the observation flight, except in situations where flight safety reasons would not so permit -- as determined by the pilot-in-command, pursuant to paragraph 16 of Section I of Article VI -- and where activities of the flight crew would be interfered with; (D) monitor compliance with the flight plan and observe the flight regime of the aircraft and the functioning and operation of the sensors; (E) listen to internal and external radio communications on board the aircraft and make internal radio communications; and (F) record the parameters of the flight regime and the functioning and operation of the sensors on maps, charts, and notepads.

Paragraph 5 of Section I establishes the additional rights of the chief flight monitor to: (A) consult with the flight crew regarding compliance with the national flight rules and the provisions of the Treaty; (B) observe the activities of the flight crew, including activities on the flight deck, during the observation flight, and monitor the functioning and operation of the flight and navigation instruments of the aircraft; (C) provide recommendations to the flight crew regarding compliance with the flight plan; (D) ask the flight crew, without interfering with their

activities, for information on the flight regime; and (E) communicate with air traffic control authorities, as appropriate, and help relay and interpret communications from air traffic control authorities to the flight crew and from the flight crew to the air traffic control authorities about the conduct of the observation flight, for which the chief flight monitor has the right to make external radio communications using the radio equipment on the observation aircraft.

Paragraph 6 of Section I requires the chief flight monitor to advise the flight crew if he believes that the aircraft is deviating from the flight plan, and permits him to inform the air traffic control authorities of any deviations from the flight plan that he believes could threaten flight safety.

Paragraph 7 of Section I establishes the additional rights of the chief flight representative to: (A) consult with the flight crew regarding compliance with the national flight rules and the provisions of the Treaty; (B) observe the activities of the flight crew, including activities on the flight deck, during the observation flight, and monitor the functioning and operation of the flight and navigation instruments of the aircraft; (C) ask the flight crew, without interfering with their activities, for information on the flight regime; and (D) receive an explanation from the flight crew as to the reasons for any deviation from the flight plan. Permissible reasons for deviations from the flight plan are contained in paragraph 1 of Section II of Article VIII. In addition, pursuant to paragraph 4 of Section II of Article VIII, the pilot-in-command has the right to curtail an observation flight in the event of technical difficulties affecting the safety of the aircraft.

Paragraph 8 of Section I establishes the right of flight representatives to direct the operation of the sensors during the observation flight. Flight representatives also have the right, upon notification to the observed Party prior to the commencement of the observation flight, to operate the sensors during the flight. If the flight representatives exercise their right to operate the sensors, however, the observed Party would not be held responsible for any failure or inadequacy in the quality of the data collected by the sensors due to the operation of the sensors by the flight representatives.

Section II, entitled "Representatives," consists of three paragraphs that set forth the rights of representatives.

Paragraph 1 of Section II establishes the right of an observing Party using an observation aircraft designated by a third State Party to have on board the aircraft at any one time the number of representatives set forth in Section III of Article VI.

Paragraph 2 of Section II requires the observing Party to appoint one of its representatives as chief representative, who has the same rights as the chief flight representative specified in Section I of this Annex. In addition, the chief representative: (A) advises the pilot-in-command regarding compliance with the provisions of the Treaty; (B) may monitor compliance by the observed Party with the provisions of the Treaty; and (C) may receive an explanation from the pilot-in-command as to the reasons for any deviations from the flight plan. Since the pilot-in-command is not carrying out duties on behalf of the observed Party in such a situation, and therefore not held responsible as the observed Party for his actions, additional arrangements dealing with the relationship between the observing Party and the flight crew will be worked out by the States Parties involved pursuant to paragraph 2 of Section I of Article VI.

Paragraph 3 of Section II establishes the rights of representatives to exercise the same rights accorded to flight representatives, as specified in Section I of this Annex.

ANNEX H

COORDINATION OF PLANNED OBSERVATION FLIGHTS

Annex H, entitled "Coordination of Planned Observation Flights," provides procedures which States Parties may use in order to avoid potential time conflicts regarding the conduct of observation flights over the same State Party during a given quarter of the year. While it could apply to flights over any Party, its primary objective is to avert timing conflicts for flights over the country or countries that have the heaviest demand, which at the present time is Russia/Belarus. Any coordination undertaken under the provisions of this Annex does not remove the obligation of a State Party to provide prior notification of its intention to conduct an observation flight, pursuant to paragraph 5 of Section I of Article VI, within 72 hours of estimated time of arrival on the territory of the observed Party. Nor does the fact that such coordination may be carried out by other States Parties remove opportunities for a State Party not participating in the coordination process to conduct an observation flight within a given quarter; nevertheless, the scheduling of such flights must be accommodated within whatever agreement may be reached by the other States Parties to coordinate their planned flights. Thus, there is an incentive to participate in the coordination process.

Paragraph 1 establishes the right of each State Party receiving an active quota following the annual distribution of active quotas -- which is conducted pursuant to paragraph 7 of Section I of Article III -- to notify all other States Parties of its plans to utilize all or part of its active quota during the following year. Such notification will be provided no later than November 1 of each year, and will indicate the number of observation flights that the State Party plans to conduct over the territory of other States Parties during each quarter of that year.

Paragraph 2 limits the total number of observation flights planned and notified in accordance with paragraph 1 of this Annex over the territory of any one State Party during a given quarter to 16. In addition, no State Party shall be obliged to accept more than one observation flight over its territory at any time during the 96-hour period allowed for arrival formalities, pre-flight inspection and the observation flight -- as specified in paragraph 9 of Section I of Article VI -- unless that State Party has requested a demonstration flight in accordance with paragraph 3 of Section I of Article VI, in which case that State Party must accept an overlap of observation flights, i.e., a continuation of the earlier observation flight and the beginning of a new observation flight, of up to 24 hours.

Paragraph 3 requires States Parties that have provided the notification pursuant to paragraph 1 of this Annex to hold consultations, if necessary due to potential time conflicts, to avoid such conflicts in their planned observation flights. If agreement cannot be reached during such consultations, the issue will be resolved by the drawing of lots among the States Parties involved. This paragraph also establishes the schedule for such consultations and for notification of the resulting sequence of observation flights based on these consultations or the drawing of lots. For the first quarter (January through March), the consultations will begin immediately upon receipt of the notification, and the resulting sequence must be notified by the previous November 15. For the second quarter (April through June), the consultations will begin February 1, and the resulting sequence must be notified by February 15. For the third quarter (July through September), the consultations will begin May 1, and the resulting sequence must be notified by May 15. For the fourth quarter (October through December), the consultations will begin August 1, and the resulting sequence must be notified by August 15.

Paragraph 4 requires each State Party to notify all States Parties planning to conduct observation flights over its territory of each flight for which it intends to provide its own observation aircraft. Such notification will be provided no later than seven days after receiving the notification of the resulting sequence of observation flights, as provided for in paragraph 3 of this Annex for the flights to be conducted in the upcoming quarter.

Paragraph 5 establishes the right of each State Party that has not provided a notification pursuant to paragraph 1 of this Annex, that has not notified its plans to utilize all of its active quota, or that has not conducted an observation flight during the quarter for which it had notified its intent to conduct such a flight, to utilize such remaining part of its active quota if such observation flight can be accommodated within the existing agreement reached by the other States Parties pursuant to paragraph 3 of this Annex.

ANNEX I

INFORMATION ON AIRSPACE AND FLIGHTS IN
HAZARDOUS AIRSPACE

Annex I, entitled "Information on Airspace and Flights in Hazardous Airspace," consists of three paragraphs that require each State Party to provide information on its airspace. Such information is essential to other States Parties in order to permit them to plan the flight to and from the territory of that State Party and to ensure the safe conduct of the observation flight. In addition, information on hazardous airspace is required in order to develop the mission plan, which, in accordance with subparagraph 4(C) of Section II of Article VI, must take into account information on hazardous airspace, as provided in accordance with Annex I. This provision is not intended to limit access to hazardous airspace. In accordance with paragraph 2 of Section II of Article VI, the mission plan may provide for an observation flight that allows for the observation of any point on the entire territory of the observed Party, including areas designated by the observed Party as hazardous airspace in the source specified in Annex I.

The provision of information on hazardous airspace is required, therefore, not as a restriction, but so that all Parties may be aware of such situations in their planning. Many participants in the Open Skies negotiations, including the United States, wanted in particular to ensure that such information on hazardous airspace was available in advance, so as to rule out the possibility that an observed Party might seek to create difficulties for an observation flight by inventing unjustified hazardous airspace at the last moment, after a mission plan had been filed.

The definition of "hazardous airspace" is contained in paragraph 32 of Article II; the related definitions of "prohibited area," "restricted area," and "danger area" are contained in paragraphs 33, 34, and 35, respectively. These follow ICAO practice, and are concerned with hazards to flight but may not be used to restrict areas for national security purposes.

Paragraph 1 requires a State Party to provide in accordance with ICAO provisions, upon the request of another State Party, information on: (A) its airspace structure, as published in the Aeronautical Information Publication (AIP) series; (B) detailed information on all hazardous airspace; and (C) airfield information and arrival and departure procedures for each of its points of entry, points of exit, Open Skies airfields, and alternate airfields and refuelling airfields for its points of entry, points of exit, and Open Skies airfields. Such information must be provided no later than 30 days after receipt of the request

but no earlier than 90 days after entry into force of the Treaty. Annex 15 to the Convention on International Civil Aviation, entitled "International Standards and Recommended Practices for Aeronautical Information Services," contains the ICAO provisions that will be followed in providing this information.

Paragraph 2 requires each State Party providing information under paragraph 1 of this Annex to promptly notify any changes in that information to those States Parties who had requested the information. The ICAO documents entitled "Notice to Airmen" (NOTAM), however, are not required to be provided.

Paragraph 3 requires each State Party to notify, no later than 90 days after entry into force of the Treaty, all other States Parties of the source of the information to be provided in accordance with paragraph 1 of this Annex. Thus, the source of the information must be provided by a State Party prior to the beginning of the obligation of that State Party to provide the information itself, i.e., no later than 90 days after entry into force of the Treaty, when the obligation to provide the information itself begins no earlier than 90 days after entry into force. By knowing in advance of the source of such information, other States Parties have an opportunity to decide whether it is in their interest to request that information pursuant to paragraph 1 of this Annex. Many participants insisted that the source be specified, so as to make more difficult the introduction of artificial hazardous airspace declarations invented solely for the purpose of interfering with an Open Skies flight.

ANNEX J

MONTREUX CONVENTION

Annex J deals with the Montreux Convention and its relation to the Open Skies Treaty. It consists of two paragraphs.

The first paragraph provides that observation flights conducted under the provisions of the Treaty providing for the observation of the entire territory of States Parties shall not prejudice the Montreux Convention of July 20, 1936. The Montreux Convention sets forth provisions regarding the transit of the Straits, including by aircraft. The Straits consists of the Straits of the Dardanelles, the Sea of Marmora and the Bosphorus.

Paragraph 1 makes clear two points. The first, which reemphasizes the underlying principle of the Treaty on Open Skies, is that the entire territory of the States Parties to the Treaty shall be open to observation flights. All participants, including the Republic of Turkey, wished to emphasize that Open Skies flights will be able to observe all points of the territory covered by the Montreux Convention, notwithstanding the provisions of that Convention which allows Turkey to establish restricted areas. The second point is that any observation flight conducted pursuant to the Treaty on Open Skies will not prejudice the provisions set forth in the Montreux Convention. This second part was inserted to assure Turkey's rights under the Montreux Convention, including the establishment of restricted areas, would not be prejudiced by Open Skies flights over such areas.

The second paragraph of Annex J provides that the routing and notification of transit flights of aircraft for the purpose of the Treaty falling within the scope of Article 23 of the Montreux Convention shall be governed by the provisions of that Article. Article 23 of the Montreux Convention reads as follows:

In order to assure the passage of civil aircraft between the Mediterranean and the Black Sea, the Turkish Government will indicate the air routes available for this purpose, outside the forbidden zones which may be established in the Straits. Civil aircraft may use these routes provided that they give the Turkish Government, as regards occasional flights, a notification of three days, and as regards flights on regular services, a general notification of the dates of passage.

The Turkish Government moreover undertakes, notwithstanding any remilitarisation of the Straits, to furnish the necessary facilities for the safe passage of civil aircraft authorised under the air regulations in force in Turkey to fly across Turkish territory between Europe and Asia. The route which is to be followed in the Straits zone by aircraft which have obtained an authorisation shall be indicated from time to time.

Since transit flights in the context of Open Skies are designed to bring an observing Party to or from the territory of an observed Party, all participants agreed that their routing and notifications could be governed by Article 23 of the Montreux Convention since in the case of observation flights, discussed in paragraph 1, there is no requirement for observation of territory during a transit flight.

ANNEX K

INFORMATION ON FILM PROCESSORS, DUPLICATORS
AND PHOTOGRAPHIC FILMS, AND PROCEDURES FOR MONITORING
THE PROCESSING OF PHOTOGRAPHIC FILM

Annex K, entitled "Information on Film Processors, Duplicators and Photographic Films, and Procedures for Monitoring the Processing of Photographic Film," consists of two sections that provide for the exchange of information on the developing of film and samples of that film, as well as procedures for monitoring film developing.

Section I, entitled "Information on Film Processors, Duplicators and Photographic Films," consists of three paragraphs that describe the exchange of information and film samples.

Paragraph 1 of Section I requires each State Party, when notifying other State Parties of film processors or duplicators that it intends to use -- as required prior to the commencement of the ground examination during the certification process, pursuant to subparagraph 3 (A)(3) of Section II of Annex D -- to provide the following manufacturer's information: (A) name of the processor or duplicator; (B) the maximum and minimum width and length, if applicable, of film which may be processed or duplicated; (C) each type of film that may be processed or duplicated in that film processor; and (D) each step in the process for each type of film.

Paragraph 2 of Section I requires each State Party, when providing information on the types of film that it intends to use -- as required prior to the commencement of the ground examination during the certification process, pursuant to subparagraph 3 (A)(2) of Section II of Annex D -- to provide appropriate manufacturer's information for each type of film, such as effective film speed, resolution/modulation, spectral sensitivity and optical specular density or sensitometric characteristics. The actual information to be provided will depend upon the national practices of the film manufacturer.

Paragraph 3 of Section I establishes the right of a State Party to receive unexposed samples of all types of film, the chemicals for processing the film, and instructions for processing and duplicating the film.

Section II, entitled "Monitoring of Film Processing and Duplication," consists of four paragraphs that establish the rights of States Parties to monitor the processing and duplication of film.

Paragraph 1 of Section II establishes the right of States Parties taking part in the certification to monitor the processing and duplication of the film used during the in-flight examination. That paragraph also establishes the right of the observed and observing Parties to monitor the processing and duplication of the film used during a demonstration flight and an observation flight.

Paragraph 2 of Section II establishes the right of States Parties monitoring the processing and duplication of film to bring with them and use listed equipment. Such equipment, however, may not be used in a manner that disrupts the processing or duplication of the film.

Paragraph 3 of Section II requires the States Parties, prior to processing the film, to check the processing equipment and chemicals to confirm that the sensitometric data for the processing of that type of film meets the proper specifications. Unless otherwise agreed, the film will not be processed or duplicated until the sensitometric data meets the proper specifications.

Paragraph 4 establishes the right of States Parties, prior to the processing of the film, to check the processing equipment and chemicals to confirm that the washing and fixing process is suitable for the purposes of permanent archive storage. This is done by exposing and processing a test film of the same type used.

ANNEX L

OPEN SKIES CONSULTATIVE COMMISSION

Annex L consists of four sections. Section I deals with the general provisions of the Open Skies Consultative Commission. Section II deals with the annual review of active quotas. Section III deals with extraordinary observation flights and Section IV deals with additional fields for the use of the Open Skies regime.

Section I, entitled "General Provisions," addresses the procedural and administrative aspects of the Open Skies Consultative Commission. Article X, also entitled "Open Skies Consultative Commission," establishes the Open Skies Consultative Commission and sets forth the general framework in which it is to operate. Annex L sets forth the general procedures of the Open Skies Consultative Commission. This was noted in Article X, paragraph 7, which provides that the provisions for the operation of the Open Skies Consultative Commission are set forth in Annex L.

The introduction to Section I provides that procedures and other provisions relating to the Open Skies Consultative Commission are established in this Annex pursuant to Article X. This introduction establishes the clear link between this Section and Article X, both of which should be read together when referring to the obligations and duties of the Open Skies Consultative Commission.

Paragraph 1 of Section I provides that the Open Skies Consultative Commission shall be composed of representatives designated by each State Party. Paragraph 1 also provides that alternates, advisers and experts of a State Party may take part in the proceedings of the Open Skies Consultative Commission as deemed necessary by that State Party. This paragraph makes clear that during the proceedings of the Open Skies Consultative Commission, issues may arise that may require the use of advisers and experts and a State Party may invite such experts and advisors to take part in the Open Skies Consultative Commission proceedings. Alternates may also take part in the Open Skies Consultative Commission proceedings. Most importantly, the paragraph makes clear that each State Party to the Treaty has a right to be represented in the Open Skies Consultative Commission.

Paragraph 2 of Section I provides that the initial session of the Open Skies Consultative Commission shall open within 60 days of the signature of the Treaty. Paragraph 2 further provides that the Chairman of the opening meeting shall be the representative of Canada. According to paragraph 2, the initial session of the Open Skies Consultative Commission was to open within 60 days of March 24, 1992. The initial session of the Open Skies Consultative Commission opened on April 2, 1992.

Paragraph 3 of Section I provides that the Open Skies Consultative Commission shall meet for no fewer than four regular sessions per calendar year, unless it decides otherwise. Paragraph 3 also provides that extraordinary sessions shall be convened at the request of one or more States Parties by the Chairman of the Open Skies Consultative Commission, who shall promptly inform all other States Parties of the request. Paragraph 3 further provides that such sessions shall open no later than 15 days after receipt of such a request by the Chairman. Paragraph 3 makes clear that the Open Skies Consultative Commission shall meet on a regular basis. Extraordinary sessions may be convened in addition to the four regular sessions per calendar year. These extraordinary sessions can be held if only one State Party requests that one be convened. In this respect, the paragraph makes clear that the States Parties desired the Open Skies Consultative Commission to meet regularly, and more often as required, to establish a predictable and efficient method for addressing issues related to the implementation of the Treaty.

Paragraph 4 of Section I provides that sessions of the Open Skies Consultative Commission shall last no longer than four weeks, unless it decides otherwise. The purpose of this paragraph is to place a limit on the number of weeks in which the Open Skies Consultative Commission is to meet. It was believed that meeting four times per year for four weeks each would provide sufficient time to cover issues regarding the implementation of the Treaty. However, a mechanism was provided for extended sessions, if so desired by the States Parties; a decision to extend a session would have to be made by the Open Skies Consultative Commission.

Paragraph 5 of Section I provides that States Parties shall assume in rotation, determined by alphabetical order in the French language, the chairmanship of the Open Skies Consultative Commission. Paragraph 5 also provides that each Chairman shall serve from the opening of a session until the opening of the following session, unless otherwise agreed. This paragraph eliminates the need to decide which representative from which State Party will chair meetings during the sessions. It is clear that the Chairman at the beginning of the session will remain the Chairman until the opening of the following session, including extraordinary sessions, regardless of the length of the session.

The representative from Canada chaired the session from April 2, 1992 to its end. The representative from Canada will continue to be the Chairman during the interim period between sessions until the opening of the following session. Canada will be obligated to perform duties associated with the Chairmanship until the fall session. If a State Party wishes to convene an extraordinary session after the conclusion of the initial session, that State

Party would inform the representative from Canada, who is responsible for informing all other States Parties of the request and of guaranteeing that the extraordinary session opens no later than 15 days after receipt of such a request. However, at the opening of that session, the chairmanship would change from Canada to the representative from the Kingdom of Denmark, pursuant to paragraph 6 of this Annex, which follows Canada in alphabetical order of the French language. It should be noted that the paragraph does specify "unless otherwise agreed;" therefore, the Open Skies Consultative Commission can agree to follow a different procedure in a particular situation.

Paragraph 6 of Section I provides that representatives at meetings shall be seated in alphabetical order of the States Parties in the French language. This paragraph, self-explanatory in nature, establishes further administrative details for the Open Skies Consultative Commission.

Paragraph 7 of Section I provides that the working languages of the Open Skies Consultative Commission shall be English, French, German, Italian, Russian and Spanish. These are the six languages of the authentic texts of the Treaty as designated in Article XIX.

The languages specified in this paragraph also serve as those languages that a State Party may select from for use by personnel for all activities associated with the observation flights, pursuant to Article VI, Section I, paragraph 4(B).

Paragraph 8 of Section I provides that the proceedings of the Open Skies Consultative Commission shall be confidential, unless otherwise agreed. Paragraph 8 also provides that the Open Skies Consultative Commission may agree to make its proceedings or decisions public. The intent of this is that the proceedings and decisions of the Open Skies Consultative Commission shall be for the sole purpose of the implementation of the Treaty. The sense of the word "confidential" is not intended to indicate or imply that the proceedings are automatically to be classified "CONFIDENTIAL" pursuant to United States security classification regulations.

Paragraph 9 of Section I provides that during the period of provisional application, and prior to June 30, 1992, the Open Skies Consultative Commission shall settle the distribution of costs arising under the Treaty. (See analysis of Decision One *intra*.) Paragraph 9 also provides that the Commission shall also settle as soon as possible the scale of distribution for the common expenses associated with the operation of the Open Skies Consultative Commission.

Paragraph 9 is the result of a protracted debate over issues regarding costs arising under the Treaty. It was decided that issues on cost would be settled as early as possible but after signature of the Treaty and during the period of provisional application.

The specific cost issue regarding the scale of distribution for the common expenses associated with the operation of the Open Skies Consultative Commission was not given a time limit by which the issue is to be resolved. Rather, it is to be settled as soon as possible.

It should be noted that the negotiators decided that the scale of distribution of the costs of the initial session of the Open Skies Consultative Commission shall be the same as that agreed for the Open Skies negotiations. This provided a temporary solution until a permanent distribution could be agreed among the States Parties.

Paragraph 10 of Section I provides that, during the period of provisional application, the Open Skies Consultative Commission shall develop a document relating to notifications and reports required by the Treaty. Paragraph 10 also provides that such document shall list all such notifications and reports and shall include appropriate formats as necessary. It is important that this task is accomplished as soon as possible prior to entry into force of the Treaty because the Treaty has approximately 50 required notifications and reports and therefore approximately 50 corresponding formats appropriate for those notifications and reports. These should be established prior to the need to make full use of them once the Treaty enters into force.

Paragraph 11 of Section I provides that the Open Skies Consultative Commission shall work out or revise, as necessary, its rules of procedure and working methods. Section I has been applied provisionally pursuant to Article XVIII, Section I, paragraph 1.

Article XVIII, Section I, paragraph 2 provides that the period of provisional application will be provisionally applied for 12 months. This means that the operations of the Open Skies Consultative Commission will terminate on March 23, 1993, unless the Treaty enters into force prior to that time or the States Parties agree to extend the period of provisional application.

Section II addresses the annual review of active quotas. It consists of a chapeau and three paragraphs.

The chapeau to Section II provides that procedures for the annual review of active quotas as foreseen in Article III, Section I, paragraph 7 shall be as set forth in the following three paragraphs in Section II.

Article III, Section I, paragraph 7 provides that after entry into force of the Treaty, the distribution of active quotas shall be subject to an annual review for the following calendar year within the framework of the Open Skies Consultative Commission. It further states that in the event that it is not possible during the annual three week review to arrive at an agreement on the distribution of active quotas with respect to a particular State Party, the previous year's distribution of active quotas with respect to that State Party shall remain unchanged.

Paragraph 1 of Section II provides that States Parties wishing to modify all or part of the past year's distribution with respect to their active quota shall notify all other States Parties and the Open Skies Consultative Commission, by October 1 of each year, of those States Parties over which they wish to conduct their observation flights during the next calendar year. It also states that such proposed modifications shall be considered by the States Parties during this review, according to the rules set forth in the following paragraphs of this Section.

Paragraph 2 of Section II provides that if the request for observation flights over the territory of any given State Party does not exceed its passive quota, then the distribution shall be established as requested, and presented to the Open Skies Consultative Commission for approval.

Paragraph 3 of Section II provides that if the requests for observation flights over the territory of any given State Party exceed its passive quota, the distribution shall be reestablished by general agreement among the interested States Parties, and presented to the Open Skies Consultative Commission for approval.

This paragraph makes clear that a process of negotiations must occur between the concerned States Parties if the demand for overflights of a given State Party exceeds its passive quota. In that case, negotiations on how to accommodate demands for overflights vis-a-vis that State Party within its passive quota will take place among the interested States Parties; their agreement will be presented to the Open Skies Consultative Commission for approval.

It should be noted that, in both paragraphs 2 and 3, the States Parties interested in the modification of all or parts of the past year's distribution of active quotas are to finalize those numbers before the revised numbers are submitted to the Open Skies Consultative Commission for final approval. In any event, the previous year's distribution of active quotas with respect to that State

Party will remain unchanged if it is not possible to arrive within three weeks at an agreement on the distribution of active quotas with respect to that State Party.

Section III addresses extraordinary observation flights. During the negotiations of the Treaty, many delegations expressed an interest in the conduct of observation flights to deal with particular unforeseen circumstances, and which would therefore require additional specific procedures. This section consists of four paragraphs.

Paragraph 1 of Section III provides that the Open Skies Consultative Commission shall consider requests from the bodies of the Conference on Security and Cooperation in Europe authorized to deal with conflict prevention and crisis management and from relevant international organizations to facilitate the organization and conduct of extraordinary observation flights over the territory of a State Party but only with its consent.

The paragraph thus establishes the responsibility of the Open Skies Consultative Commission to consider an extraordinary flight upon the request from a body of the Conference on Security and Cooperation in Europe or from a relevant international organization. The term "relevant" has been inserted to make clear that the international institution in question must be one that deals with issues related to those of conflict prevention and crisis management and that such extraordinary observation flights must be conducted in the interests of those types of issues. The word "relevant" further indicates that the organization must be concerned with issues and territory of States Parties to the Treaty on Open Skies. It should be noted that, initially, all members of the Open Skies Consultative Commission are also members of the Conference on Security and Cooperation in Europe, and would thus have a role in any decisions regarding a request from that conference.

Paragraph 2 of Section III provides that, should such a flight be requested and conducted, the data resulting from such observation flights shall be made available to the bodies and organizations concerned. In this particular instance, when data are being made available to an organization some of whose members were not States Parties to the Treaty. States Parties would have to consider whether, in taking positions within relevant international organizations, to support a request for an extraordinary observation flight.

Paragraph 3 of Section III provides that, notwithstanding any other provision of the Treaty, States Parties may agree on a bilateral and voluntary basis to conduct observation flights over the territory of each

other, following Open Skies procedures regarding the conduct of observation flights. It also provides that, unless otherwise agreed by the States Parties concerned, the data resulting from such observation flights shall be made available to the Open Skies Consultative Commission.

Paragraph 4 of Section III provides that observation flights conducted under the provisions of this Section shall not be counted against the active or passive quotas of the States Parties involved. This is a very important provision because it makes clear that observation flights conducted pursuant to paragraph 1 or paragraph 3 of this Section do not count against either Party's active or passive quota. This provision is designed to enhance the flexibility of the Treaty and emphasize the special character of these flights.

Section IV addresses additional fields for the potential application of the Open Skies regime and consists of two paragraphs.

Paragraph 1 of Section IV provides that States Parties may raise for consideration in the Open Skies Consultative Commission proposals for use of the Open Skies regime in additional fields, specifically citing the environment.

Paragraph 2 of Section IV provides that the Open Skies Consultative Commission may take decisions on such proposals or, if necessary, may refer them to the first and subsequent conferences called to review the implementation of the Treaty, in accordance with the provisions of Article XVI, paragraph 3. In conjunction with Article X, paragraph 2, any decision taken by the Open Skies Consultative Commission on this issue must be made by consensus. This paragraph sets forth the procedure by which the decision as to whether the Open Skies regime should be extended to other fields is to be made.